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RICHARD L. JOINER,
Appellant-Defendant,

[illegible]

No. 64A03-0711-CR-522

Appellee-Plaintiff.

The Honorable William Alexa, Judge
Cause No. 64D02-0612-FB-11359

March 31, 2008

MAY, Judge

Richard L. Joiner appeals his four-year sentence for burglary as a Class C felony.¹ He claims the advisory sentence is inappropriate in light of his character and offense. We affirm.

FACTS AND PROCEDURAL HISTORY

Joiner accompanied his girlfriend's brother, his girlfriend's teenage son, and another teen to burglarize a home. They stole jewelry, electronics, and alcohol. That night they drank the alcohol, and the next day they pawned the other items. When confronted by police, Joiner denied involvement and placed the blame on the two juveniles. Police talked to the juveniles, who reported Joiner was involved in the burglary. Joiner then claimed he was outside the house urinating during the burglary and had stepped into the house only briefly.

On December 14, 2006, the State charged Joiner with Class B felony burglary. Five months later, Joiner agreed to plead guilty to burglary as a Class C felony. The court found two aggravating factors: Joiner's criminal history and "the crime committed was a crime against a person, not property." (App. 27.) It also found one mitigator: Joiner's incarceration would be a hardship to his dependents. The court ordered Joiner to serve four years in the Department of Correction, with no time suspended.

DISCUSSION AND DECISION

Joiner asserts his four-year sentence is inappropriate. We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender."

¹ Ind. Code § 35-43-2-1.

Ind. Appellate Rule 7(B). We give deference to the trial court's decision, recognizing the special expertise of the trial court in making sentencing decisions. *Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 208 (Ind. 2007). The defendant bears the burden of persuading us the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

After balancing the two aggravators it found against the one mitigator, the court gave Joiner the advisory sentence for a Class C felony. *See* Ind. Code § 35-50-2-6 (advisory sentence for a Class C felony is four years). We do not find that advisory sentence inappropriate in light of Joiner's character.² Joiner engaged in burglary with a teenager who lived in his home and who is the son of Joiner's girlfriend of eight years. When confronted by police Joiner tried to shift the blame for the crime to that teen and his teenage friend. Even after Joiner had pled guilty to burglary, he still did not take responsibility for his crime. (*See* Tr. at 14 ("somebody steered me the wrong way . . .").) (*See also* App. at 21 (When giving his version of events to the presentence investigator, Joiner "stated he never entered the property.")) Although Joiner did not accept responsibility, he profited from the burglary, as he received \$600 for the stolen items that he pawned, but gave only \$25 to each of the teens.

Joiner's criminal history includes felony convictions in 1994 of possession of a controlled substance and burglary. He received sentences of probation for those crimes,

² We agree with Joiner that his crime was not "particularly egregious," (Appellant's Br. at 7), and "there is nothing about this crime which shows the effect any greater than any other burglary." (*Id.* at 8.) Nevertheless, those arguments do not convince us Joiner was entitled to less than the advisory sentence. Joiner's "advisory sentence" is appropriate for his "average" burglary.

and his probation was revoked. Joiner had no other convictions between those and the current conviction, but he was charged with crimes in 1997, 1999, and 2000 that were “Stricken Off with Leave to Reinstate.” (App. at 19.) When Joiner’s presentence report was prepared, he had pending misdemeanor charges of invasion of privacy and operating without a license. As for uncharged criminal activity, Joiner reported to the PSI investigator that he had been smoking two or three marijuana cigarettes per day since he was sixteen years old. We do not see Joiner as “innocuous.” (Appellant’s Br. at 8.)

Nor was the court required to ignore Joiner’s violation of probation twelve years before. Joiner’s subsequent behavior suggests that term of probation did not make Joiner’s behavior more law-abiding.

In light of the facts before us regarding Joiner’s character and offense, we decline to revise his sentence below the advisory or to meddle with the trial court’s decision to order that sentence be served in the Department of Correction.

Affirmed.

KIRSCH, J., and RILEY, J., concur.